

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-5937
APPEAL OF MICHAEL AND SUSAN GELMAN et al.**

OPINION OF THE BOARD

(Hearings held December 17, 2003, January 7, 2004, March 10, 2004, May 12,
2004,
June 23, 2004)
(Effective Date of Opinion: December 8, 2004)

Case No. A-5937 is an administrative appeal filed by Michael and Susan Gelman, Alan and Harriette Fox, Scott and Courtney Kane, Brian Smith and Donna Holverson, and John and Virginia Ryan (the "Appellants") from the September 11, 2003 decision of the Historic Preservation Commission (the "HPC") approving, with conditions, Historic Area Work Permit No. 33092 for certain alterations and additions to a single-family dwelling located at 15 West Lenox Street, Chevy Chase, Maryland 20815 (the "Property").

Pursuant to Sections 24A-7(h), 2-112, and 2A-1 et seq. of the Montgomery County Code, the Board held public hearings on the appeal on December 17, 2003, January 7, 2004, March 10, 2004, May 12, 2004, and June 23, 2004. Harry W. Lerch, Esquire, and Stuart Barr, Esquire, represented the Appellants. Associate County Attorney Vicki L. Gaul represented the HPC. Todd D. Brown, Esquire, represented Nicole and Lee Jundanian, the owners of the Property, who intervened in the proceedings (the "Owners"). Peter Wellington, a neighboring property owner, also intervened and appeared *pro se*.

Decision of the Board: Administrative appeal **denied**.

FINDING OF FACT

The Board finds by a preponderance of the evidence that:

1. The Property, known as 15 West Lenox Street, is located in the Chevy Chase Village Historic District. The Property is trapezoidal in shape and consists of about 31,189 square feet. The Property has 170 feet of frontage on the north side of West Lenox Street and is about 216 feet deep along its eastern side lot line. The west side lot line is only 150 feet deep, resulting in angled rear lot line. The Property's topography slopes down from front to rear and a stream runs across the lot near the rear lot line.

The Property is one of 11 properties originally designated as the Chevy Chase Village Historic District in 1995. The District was expanded in 1998 to include 326 buildings. The Property is bounded on the north by the Chevy Chase Country Club golf course, which is not part of the District. All other vicinal properties are improved with single-family detached dwellings located within the District.

2. The Property is improved with a two and one-half story "Craftsman" style stucco house with a hipped slate roof. The house is situated about 35 feet from the front lot line, 44.8 feet from the west side lot line, and 37.9 feet from the east side lot line. The house consists of 5,405 square feet of total area, including a 2,390 square foot first floor, 2,100 square foot second floor, and 915 square foot attic. In addition, the house has a 2,995 square foot basement. The "footprint" of the house, including porches, covers 3,140 square feet, or about 10% of the lot.

The original house was built in 1913 and has been added onto extensively over time. Originally the house was a five-bay center hall house. A large addition was thereafter constructed, extending the west side of the house. A one-story den addition was then added on the east side, a two-story addition was added to the rear in 1961, and a porch was added to the west side in 1968.

3. The Owners propose to remove the east side one-story addition, the rear two-story addition, and the west side porch and replace them with new construction. More specifically, the west side porch will be replaced with a one-story addition that will be 15 feet wide and 18 feet deep and will be set back behind the existing chimney, about 15 feet behind the front edge of the existing porch. The east side den addition will be removed and the outer wall restored with a chimney. A one story addition will be constructed at the rear of the east side of the house. This addition will extend about 15 feet from the east side of the house (with a two-foot bay) and will be about 21 feet deep. A large 2½ story addition will be constructed onto the rear of the house. A two-bay side-entry garage will be constructed at that rear of the west side of house. A large terrace will be constructed behind the west side of the new addition and a smaller terrace will be constructed behind the east side addition.

Not including the basement, the total floor area of the house will increase as a result of the new construction from 5,405 square feet to 7,630 square feet, a

41% increase. The footprint of the house will increase only 940 square feet, however, so that the lot coverage of the house will increase from 10% to 13%.

The materials for the new construction include slate roof and copper gutters and downspouts, random granite veneer foundation and terrace walls, painted wood shingles, painted stucco, and painted wood trim, columns, shutters eaves and rafter tails. Flagstone will be used for the terraces, walkways, and porch floors. Windows will be painted wood double-hung with single pane glass and painted triple-track storm and screen windows as well as painted wood simulated divided light casement windows. Proposed French doors will be painted wood with simulated divided light insulated glass and painted wood screen doors. Terrace railings will be painted wrought iron.

The Owners also propose to install a 45' by 18' swimming pool with surrounding terrace in the northwest portion of the Property.

4. The Owners submitted an application for an Historic Area Work Permit ("HAWP") for the above work to the HPC on June 30, 2003 (Exhibit 3).¹ On September 3, 2003, HPC staff recommended approval of the application with two conditions: (1) that tree protection measures be taken during construction, and (2) that the swimming pool proposal be approved in concept, but that the Owners be required to obtain HPC approval of details relating to grading fencing and retaining walls before applying for a building permit (Exhibit 21). By letter dated September 10, 2003, the Chevy Chase Village Local Advisory Panel ("LAP") concurred in the staff's recommendation (Exhibit 19). On September 10, 2003, the HPC held a public hearing on the application and, at its conclusion, determined to approve the HAWP with the conditions proposed by staff (Exhibit 16). The Appellants, who live in the vicinity of the Property, timely filed this appeal to the Board of Appeals.

5. Gwen M. Wright, the Historic Preservation Supervisor for the HPC, testified that the home on the Property is considered a "contributing resource" in the District. Because of the changes to the structure made in the 1960's, it has lost some of its historic and architectural significance. The block on which the Property is located is representative of the District and contains many houses of great historic and architectural significance.

Anne Fothergill, the Historic Planner for the HPC who reviewed the Owners' application, testified that she recommended approval because the bulk of the proposed construction would be located at the rear of the house and would be broken up. She noted that the east and west side additions will be set back further than the existing wings and that the proposed front street view will be comparable to what exists today. She stated that the increased lot coverage will not be greater than that of other properties in the District that she has reviewed.

¹ This application was the last in a series of revised applications for the Property. The Board's review is limited to the final application.

Kim Williams, an HPC Commissioner and architectural historian, testified that she voted to approve the Owners' application because she believed it met the Chevy Chase Village guidelines by placing the additions at the rear of the house and stepping them down into the landscape. Because of the design of the improvements and the size of the lot, she felt that the proposal will not detract from the "gardenlike setting" of the area.

6. Courtney Kane, an Appellant who lives at 16 West Lenox Street, which is located opposite the Property, testified that she feels the proposed addition is out of scale and character with the neighborhood.

Michael Gelman, an Appellant who lives at 11 West Lenox Street, which is immediately to the east of the Property, testified that he believes the size and scale of the proposed addition are massive. He stated that the rear addition will be visible if one stands in front of his house.

Scott Kane, an Appellant who also lives at 16 West Lenox Street, presented photographs of other homes in the area and testified that, while some homes have had additions, they have been primarily in the rear and have maintained an open view to the rear of the lot.

John Ryan, an Appellant who lives at 33 West Lenox Street, which is immediately to the west of the Property, testified that the Property is at a higher elevation than his home creating a perception of greater width. He stated that the left side elevation of the proposed additions to the Property will obstruct his view of the golf course. Mr. Ryan testified that his house, to which he has constructed an addition since the establishment of the Historic District, has about 6,000 square feet of interior heated space.

Alan Fox, an Appellant who lives at 8 West Lenox Street, testified that he is concerned that the massing of the proposed additions is too great in relation to the surrounding houses. He stated that he is also concerned that if approved the size of the house will become a precedent for the enlargement of other homes in the Historic District.

7. Lawrence C. Abell, who appeared on behalf of the Appellants, was qualified as an expert in architecture and land planning. Mr. Abell presented an analysis of the proposed construction (Exhibit 42). Mr. Abell's analysis included a sight line study comparing the present and expected views of the golf course behind the Property from West Lenox Street (pp. 17-29). According to the analysis, significantly more of the golf course view will be blocked after construction than at present. On cross examination, however, Mr. Abell conceded that his analysis of present conditions did not include the existing west or east additions to the house on the Property.

Mr. Abell's study also compared the widths of the 11 original homes in the district (excluding porches) to the proposed width of the Owners' home and found that it will be the widest (pg. 31).

Mr. Abell found that the average living area (not including attics or basements) of all of the homes on West Lenox Street is 3,439 square feet and the average lot size is 14,483 square feet. He found that, when built, the proposed house will consist of 6,785 square feet (excluding basement and attic), or 197.30% of the average West Lenox Street home size (pg. 37). Mr. Abell applied the same analysis to all Craftsman style homes in the Historic District and found that the average Craftsman home is 3,114 square feet in living area located on an average 11,346 square foot lot. The living area of the proposed home will be 217.87% of the average Craftsman home size (pg. 38). Mr. Abell combined his analysis and found that the living area of the proposed home will be 271.37% of the average living area of all Craftsman style homes, homes with additions, and homes on West Lenox Street (2,500 square feet). The average lot size of such homes is 11,996 square feet (pg. 39).²

Mr. Abell presented data derived from HPC historic area work permit records to indicate that if approved the Owner's proposed addition of 4,445 square feet to the house will be 1.8 times as large as the next largest addition approved for any Craftsman or West Lenox Street home (Exhibit 43(a)). He used SDAT data to find that the total area of the proposed house will be 1.5 times as large as the next largest Craftsman or West Lenox Street home and nearly three times larger than the median home (Exhibit 43(b)). On cross-examination, Mr. Abell revealed that these figures include the area of the basement and attic of the Owner's home but do not include the area of the basements and attics of most of the other homes in the survey.

8. George Kousoulas was qualified as an expert in architecture with an emphasis on historic architecture. He testified that the proposed addition is far larger than other additions that have been approved in the District and as a percentage of the total building area. He stated that the additions will be seen from the public right-of-way. He stated that the open space "gaps" between houses in the District are an important part of the character of the neighborhood and that the proposed additions will intrude into the views of those gaps from the right-of-way.

Mr. Kousoulas also testified that the Craftsman style of architecture is a simple, basic style. He stated that because Craftsman homes have a box-like design they should not be encumbered with side additions. He opined that the proposed additions are not compatible with Craftsman design of the home. He

² Using Mr. Abell's figures, the ratio of the average living area of homes on West Lenox Street to their average lot size is 23.7%; for Craftsman homes the ratio is 27.4%; and for all Craftsman homes, homes with additions, and homes on Lenox Street, the ratio is 20.8%. For the proposed Owner's home, the ratio of the total proposed living area to the lot size is 21.8%.

also stated that the proposed chimney on the east side of the house is not compatible with the design of the home. He recommended that the proposal should be changed to remove the two side additions and reduce the rear addition so that it is less visible from the street right-of-way. On cross-examination, Mr. Kousoulas agreed that the proposal to remove the existing east-side addition to expose the original wall of the house is a benefit to the design of the home.

9. Peter Wellington, an intervening party who lives at 18 West Lenox Street, testified that he assisted in the drafting of the Chevy Chase Village guidelines and is a member of the Local Advisory Panel. He stated that the guidelines emphasize permitting the “evolving eclecticism” of architectural styles while preserving the “open park-like character” of the District. He stated that the drafters’ intent of the guidelines was that alterations would receive moderate scrutiny if they are visible from the public right-of-way and lenient scrutiny if they are not. He stated that in his opinion the rear yards of the properties contribute to the open park-like character of the District.

Mr. Wellington stated that the proposal is contrary to the guidelines and the Interior Secretary’s standards because (1) the addition will increase the above-ground portion of the existing house by over 50%, (2) the house will be twice as big as the average house on the block, and (3) the house will be the biggest house on the block. He stated that the large size of the lot makes the additions more visible from the public right-of-way.

10. David Jones, the project architect, was qualified as an expert in architecture with an emphasis in historic residential architecture. Mr. Jones referred to a description of the Historic District contained in the Maryland Historic Trust’s Inventory of Historic Properties (Exhibit 55) which states that many of the houses in the District were built on “large sites with the house’s long axis parallel to the street. This arrangement provided the family with a front lawn and the privacy of a rear yard.” He also referred to the description contained in the Master Plan Amendment (Exhibit 12) which states that the architecture of Chevy Chase prior to World War I was characterized by “large-scale ... houses usually built on sizeable lots” (page 6). Mr. Jones explained that the terms “size” and “massing” as used in historic preservation standards have different meanings in that size is the actual dimensions of an object while massing is the way the object is arranged in space. He stated that massing can be used to reduce the perception of size of a building.

Mr. Jones testified that the proposed construction is designed to reduce the massing of the building because it is broken down into three elements – the rear and two side additions. He stated that the wings will be set back from the front façade of the house to reduce their apparent size. The additions are stepped down toward the ground and extend the house into the landscape. If the additions were moved to the rear of the home, it would look like a big box. He

testified that the character-defining elements of the house will be retained and the wings set back and differentiated from the main house.

Mr. Jones stated that West Lenox Street has a variety of house styles, house sizes, and lot sizes. The longest house is at 8 West Lenox Street, which is over 95 feet long. Most of the homes on the street have had additions. Mr. Jones presented photographs of homes that he considered representative of the large-scale architecture of the District (Exhibit 56). He then presented data (Exhibits 57-59) comparing the side yard widths (the open space area from a structure to the side lot line) of lots on West Lenox Street. After construction, the Property will have the third widest east side yard (31.2 feet), the widest west side yard (44.8 feet) and the second widest total side yard distance (76 feet). In addition, he found that the width of the proposed building as a percentage of the total lot width will be the second lowest on the block at 55% (three homes exceed 70%).

Mr. Jones presented photographs and site diagrams (Exhibit 60) of three recently approved additions to homes within the District which resulted in a reduction in side yards. In these homes, the proportion of house width to lot frontage increased from 41% to 60%, from 53% to 70%, and from 54% to 70.5%. For the Property, the proposed construction will increase the proportion of house width to lot frontage from 52.5% to 55%. Mr. Jones also presented documentation of ten other homes in the District for which side additions had been approved by the HPC since 1998. Eight of these side additions were two-stories tall. Five of the projects approved by the HPC involved side additions with no addition to the rear of the house (Exhibit 61).

Mr. Jones presented data indicating that the height of the subject home, when measured from the top of the curb in front of the house to the highest peak of the home, is 32.73 feet. Its height is third smallest among the homes on West Lenox Street, which range from 30.33 feet to 42.01 feet (Exhibits 62 and 63.). He stated that the home at 8 West Lenox Street (the Fox house), which is longer and higher than the subject home, has a greater visual impact from the street because its massing is greater.

Mr. Jones presented a sight-line analysis (Exhibit 65) of the views of the rear of the Property before and after construction of the addition. The analysis shows that 97% (415') of the viewing distance along West Lenox Street in front of the Property will be retained. More specifically, about 33 feet of viewing area will be lost from areas east and west of the Property due to construction of the east, rear, and west additions, but 20 feet of viewing distance will be added from in front of the house due to the removal of the existing east side den. Therefore, he concluded that there will be only a 3% reduction in the view shed.

Mr. Jones also presented data showing that the ratio of the floor area of the proposed home (6,785 square feet, excluding basement and attic) to the lot

size is .22. This ratio will be the third smallest of the 11 homes on West Lenox Street, which range from .15 to .56 (Exhibit 68). The average floor area ratio for the block is .31.

11. Emily Hotaling Eig, who was qualified as an expert architectural historian, testified that the proposed plan complies with the District guidelines. She stated that under the proposal the front façade of the house is unchanged and will continue to define its historical character. She stated that the home is not a pure Craftsman-style house, which is usually a small bungalow, but is eclectic with Colonial Revival elements. The setback of the two side additions minimizes the massing of the home by breaking it down into pieces.

CONCLUSIONS OF LAW

1. Section 24A-7(h)(1) of the Montgomery County Code provides that:

“Within 30 days after the Commission makes a public decision on an application, an aggrieved party may appeal the Commission’s decision to the Board of Appeals, which must review the decision de novo. The Board of Appeals may affirm, modify, or reverse any order or decision of the Commission.”

2. Preliminarily, the Appellants moved to prohibit the HPC from participating in the case and to require that the Owners bear the burden of proof to show that the application meets the standards of the law. The Appellants base their motion largely on the above-quoted language of Section 24A-7(h)(1), focusing on the term “de novo.” They argue that this term means that the Board must hear the case anew as if the HPC decision had never been rendered. In such case, they contend, the HPC has no role in the proceedings and the Owners must justify their HAWP application again before the Board.

Ordinarily, as this Board has previously held, when an appeal from a quasi-judicial body is heard “de novo,” the matter is to be tried anew as if it had not been heard before and as if no decision had been previously rendered. In effect, the Board is exercising what amounts to original jurisdiction. For all intents and purposes, it is the first hearing of the case. *Pollard's Towing, Inc. v. Berman's Body Frame & Mech., Inc.*, 137 Md. App. 277, 768 A.2d 131 (2001); *Boehm v. Anne Arundel County*, 54 Md. App. 497, 459 A.2d 590 (1985); *Lohrmann v. Arundel Corp.*, 65 Md. App. 309, 500 A.2d 344 (1985); *Hill v. Baltimore County*, 86 Md. App. 642, 587 A.2d 1155 (1991). Ordinarily, then, we might agree with the Appellants and consider the application anew, placing the burden upon the Owners to show by a preponderance of evidence that the criteria of the statute have been met.

We find, however that words “de novo” in this case do not have the same significance as they ordinarily might. The Maryland courts have stated that the meaning of the term “de novo” with respect to administrative appeals may vary with the subject matter of the review, the function of the agency, or the nature of

the remedy. *Boehm*, 459 A.2d at 598. “There are many provisions in Maryland law for what are loosely termed de novo ‘appeals.’ Some of these appeals are less ‘de novo’ than others in that the action of the body subject to review retains some vitality and must be considered in the reviewing process.” *Lorhmann*, 500 A.2d at 348.

In this case, the function of the Board is not, as it is elsewhere in the Code provided, to “hear” or “decide” the matter “de novo” (see, e.g., appeals from the Sign Review Board, Section 59-F-10.3). Under the Historic Preservation ordinance, rather, the Board’s function is to “review the [HPC] decision de novo.” We must assume that the County Council meant to use these particular words, and we must give them meaning. In order to review a decision, we must consider the decision. We think it is altogether appropriate, then, for the HPC to participate in the hearing and present its findings and reasons for making the decision that it did.

With respect to the burden of proof, Section 2A-8(d) of the County’s Administrative Procedure Act, which governs this proceeding, states unequivocally that “where a governmental agency or an administrative authority is a party, such agency or administrative authority shall have the burden of going forward with the production of evidence at the hearing before the hearing authority.” Section 2A-10(b) further provides that “all recommendations and/or decisions of the hearing authority shall be based upon and supported by a preponderance of the evidence of record.” Consequently, where HPC is a party, it is required to produce evidence to show that its decision is correct. Where, as here, the owner intervenes, it may also produce evidence of the correctness of the HPC decision. The Appellants may produce evidence to the contrary. The Board’s duty is simply to determine, by a preponderance of the evidence presented by all of the parties, whether the HAWP was correctly issued.

3. In reviewing an application for an historic area work permit, we look first to the criteria set out in Section 24A-8 of the Montgomery County Code:

“(a) The commission shall instruct the director to deny a permit if it finds, based on the evidence and information presented to or before the commission that the alteration for which the permit is sought would be inappropriate, inconsistent with or detrimental to the preservation, enhancement or ultimate protection of the historic site or historic resource within an historic district, and to the purposes of this chapter.

(b) The commission shall instruct the director to issue a permit, or issue a permit subject to such conditions as are found to be necessary to insure conformity with the purposes and requirements of this chapter, if it finds that:

(1) The proposal will not substantially alter the exterior features of an historic site or historic resource within an historic district; or

(2) The proposal is compatible in character and nature with the historical, archeological, architectural or cultural features of the historic site or the historic district in which an historic resource is located and would not be detrimental thereto or to the achievement of the purposes of this chapter; or

(3) The proposal would enhance or aid in the protection, preservation and public or private utilization of the historic site or historic resource located within an historic district in a manner compatible with the historical, archeological, architectural or cultural value of the historic site or historic district in which an historic resource is located; or

(4) The proposal is necessary in order that unsafe conditions or health hazards be remedied; or

(5) The proposal is necessary in order that the owner of the subject property not be deprived of reasonable use of the property or suffer undue hardship; or

(6) In balancing the interests of the public in preserving the historic site or historic resource located within an historic district, with the interests of the public from the use and benefit of the alternative proposal, the general public welfare is better served by granting the permit.

(c) It is not the intent of this chapter to limit new construction, alteration or repairs to any 1 period or architectural style.

(d) In the case of an application for work on an historic resource located within an historic district, the commission shall be lenient in its judgment of plans for structures of little historical or design significance or for plans involving new construction, unless such plans would seriously impair the historic or architectural value of surrounding historic resources or would impair the character of the historic district.”

We must also consider the criteria for HAWP approvals set out on the HPC’s regulations, as codified at Section 24A.01.01.1.5 of the Code of Montgomery County Regulations:

“(a) The Commission shall be guided in their review of Historic Area Work Permit applications by:

(1) The criteria in Section 24A-8.

(2) The Secretary of the Interior's Standards and Guidelines for Rehabilitation.

(3) Pertinent guidance in applicable master plans, sector plans, or functional master plans, including categorization of properties in historic districts by level of significance - if applicable.

Such categories will be defined and explained clearly in the applicable plans.

(4) Pertinent guidance in historic site or historic district-specific studies. This includes, but is not limited to, the 1992 Long Range Preservation Plans for Kensington, Clarksburg, Hyattstown, and Boyds.

(b) Where guidance in an applicable master plan, sector plan, or functional master plan is inconsistent with the Secretary of the Interior's Standards and Guidelines for Rehabilitation, the master plan guidance shall take precedence."

The pertinent master plan for the Chevy Chase Village Historic District is the "Approved and Adopted Amendment to the Master Plan for Historic Preservation: Chevy Chase Village Historic District – Expansion" dated April 1998 (Exhibit 12). The following provisions pertain to the subject application:

"Contributing resource: A resource which contributes to the overall character of the district and its streetscape, but which is of secondary architectural and historical significance. A resource may be classified as contributing if it is a common or ubiquitous example of an architectural style that is important to the historic district, or if it was an outstanding resource that, while still identifiable as a specific architectural style, has lost some degree of its architectural integrity due to alterations. Contributing resources add to the overall streetscape due to their size, scale, and architectural character." (pg. 7).

"The HPC, when reviewing a Historic Area Work Permit must give considerable weight to the recommendation of the Local Advisory Panel." (pg. 12).

"[With respect to alterations to existing structures] it is of paramount importance that the HPC recognize and foster the Village's shared commitment to evolving eclecticism, which necessitates substantial deference to the judgment, creativity and individuality of Village residents." (pg. 13).

"...it is also of paramount importance that the HPC recognize and foster the Village's open, park-like character, which necessitates respect for existing environmental settings, landscaping, and patterns of open space. For most Village residents, these landscape and scale issues far outweigh questions of architectural style." (pg. 13).

"Additional basic polices that should be adhered to are:

... 2. Preserving the integrity of contributing structures on the district. Alterations to contributing structures should be designed in such a way that the altered structures still contribute to the district.

... 4. Design review emphasis should be restricted to changes that will be visible from the front or side public right-of-way, or that would be visible in the absence of vegetation or landscaping.

5. Alterations to the portions of a property that are not visible from the public right-of-way should be subject to very lenient review. Most changes to the rear of the properties should be approved as a matter of course.” (pg.14).

“Lot coverage should be subject to strict scrutiny, in view of the critical importance of preserving the Village’s open park-like character.” (pg. 15).

“Major additions should, where feasible, be placed to the rear of the existing structure so that they are less visible from the public right-of-way. Major additions which substantially alter or obscure the front of the structure should be discouraged but not automatically prohibited. For example, where lot size does not permit placement to the rear, and the proposed addition is compatible with the street scape, it should be subject to moderate scrutiny for contributing resources, but strict scrutiny for outstanding resources.” (pg. 16).

“‘Lenient scrutiny’ means that the emphasis of the review should be on issues of general massing and scale, and compatibility with the surrounding streetscape, and should allow for a very liberal interpretation of preservation rules. Most changes should be permitted unless there are major problems with massing, scale or compatibility.

‘Moderate scrutiny’ involves a higher standard of review than ‘lenient scrutiny.’ Besides issues of massing, scale and compatibility, preserving the integrity of the resource is taken into account. Alterations should be designed so that the altered structure still contributes to the district. Use of compatible new materials, rather than the original building materials, should be permitted. Planned changes should be compatible with the structure’s existing design, but should not be required to replicate its architectural style.

‘Strict scrutiny’ means that the planned changes should be reviewed to insure that the integrity of the significant exterior architectural or landscaping features and details is not compromised. However, strict scrutiny should not be “strict in theory but fatal in fact” – i.e., it does not mean that there can be no changes but simply that proposed changes should be reviewed with extra care.” (pg. 15).

Finally, the pertinent provision of the Secretary of the Interior's Standards and Guidelines for Rehabilitation (Exhibit 13) is Standard Number 9, which states:

“New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.”³

4. From these regulations and standards, we glean the following guiding principles applicable to the Owner's HAWP proposal:

- The additions must be “compatible” in nature and character with the historical and architectural features of the historic district;⁴
- Given the “eclectic” nature of the architecture of the house itself and the other homes in the District, and given the Master Plan's stated preference for deference to the residents on matters of architectural style, we should be lenient in our review of the materials and design features of the proposed additions;
- Conversely, we should be more circumspect with respect to issues of size, scale and massing of the structures and their impact on the “surrounding streetscape” and “open, park-like character” of the District;
- To the extent the additions are located to the rear of the home and are thereby not visible from the public right-of-way, they should be approved. The more visible the additions are from the public right-of-way, they should receive a greater degree of scrutiny;
- Lot coverage is a critical factor; and
- The LAP recommendation must be given considerable weight.

5. Applying these guiding principles to the HAWP application before us, we find that the weight of evidence favors approval of the proposed work. First, there is no doubt that the Owners' home qualifies as a “contributing resource” in the District. While it is representative of the Craftsman style of home, the extensive additions and changes made to it prior to the designation of the District have reduced its architectural integrity and significance. The Appellants did not challenge HPC's finding on this point. Neither did they offer any substantial resistance to the HPC's finding that the architectural design, materials and

³ In this regard, we disagree with a statement made by one HPC Commissioner during its deliberations of this case that the Secretary of Interior's Standards do not apply. We believe that Standard Number 9 is not inconsistent with the Master Plan and is pertinent to this case.

⁴ We note that “compatibility” does not connote sameness or consistency; rather “compatible” means “capable of existing or performing in harmonious, agreeable, or congenial combination with another or others.” *The American Heritage Dictionary of the English Language*, 4th Edition (2000).

features of the proposed additions are compatible with the existing home. The HPC staff recommendations and the testimony of Mr. Jones and Ms. Eig, both experts in historic architecture, support this finding.⁵

Although Mr. Kousoulas, who also qualified as an expert, opined that the side additions are incompatible with the Craftsman “box-like” style, it is also clear that the Owners’ home is not a pure Craftsman style house. The past enlargements of the house, the addition of the two one-story wings, and the incorporation of Colonial Revival elements prior to the designation of District have changed it from a box-like bungalow to a larger, more expansive style of home. The proposed additions will only replace existing wings and, in fact, reduce their impact on the design of the existing home by moving them away from the front of the house. Based upon this evidence and our review of the Owners’ HAWP application, and given the leniency with which we are directed to review matters of architectural design, we find that the proposed additions are compatible in design, materials and features with the existing home.

6. The more significant aspects of the Owners’ HAWP proposal, and the ones to which the parties devoted most of their energies, are the size, scale and massing of the structures and their impact on the “surrounding streetscape” and “open, park-like character” of the District. There is no doubt that the proposed increase in floor area of some 2,225 square feet⁶ represents a significant increase (41%) in the size of the home. However, size alone is not determinative of compatibility. We believe the scale and massing of the additions are the more important factors because they relate the size of the structures to the existing house, the lot, and the surrounding area – including the view shed from West Lenox Street. Consequently, we must take into consideration both the relative size of the lot and the location and configuration of the additions in order to assess their impact on the District.

7. We are persuaded by the evidence – in particular the testimony of Mr. Jones – that the proposed additions, when considered in the context of the existing home and the Property’s shape and size, will be compatible in scale with the District. When completed, the 7,630 square foot home will be centered on a 31,189 square foot lot that is 170 feet wide along its West Lenox Street frontage. Using Mr. Abell’s figures, the average home in the District has about 2,500 square feet of living area on an approximately 12,000 square foot lot. Thus, while the proposed home will be larger than most in the District, it is also located on one of the largest lots in the District. Even using the Appellants’ figures, the ratio of the proposed living area of the finished home to the lot size (21.8%) will

⁵ Indeed, the HPC staff report states that the proposed materials and design match the existing house “almost identically” and suggests, without recommending, that the materials be changed to provide more differentiation between the old and new. Exhibit 21, pg. 5.

⁶ We derive this figure from the HPC staff report and include the attic area but exclude the floor area of the proposed basement. Because the basement is primarily underground and not visible from the street, it is not applicable to our analysis.

be less than that of other homes on West Lenox Street (23.7%)⁷ and comparable to other homes in the District (20.8%).

In addition, while the Owners proposal will make their home one of the widest on West Lenox Street, it will be only 2.5% wider than it is presently. What's more, Mr. Jones' uncontroverted testimony establishes that the home will retain the second largest side yard space on the block. The width of the house will be only 55% of the lot width, the second lowest on the block, as compared to three other homes that cover over 70% of the their lot width. Mr. Jones' testimony also established that the height of the house, which will not change with this proposal, is third smallest among the homes on West Lenox Street.

Consequently, the weight of the evidence persuades us that, when considered in the context of the relatively larger size and shape of the Property, the Owners' finished home will be comparable in relative floor area, smaller in height, and provide more side yard space than most other homes in the area. We conclude that the proposal is therefore compatible in scale with the District.

8. We are likewise persuaded by the weight of the evidence that that proposed massing of the completed home will be compatible with the District. The majority of the new construction will be located at the rear of the existing house and will be out of view from the West Lenox Street right-of-way. The one-story additions to the east and west side of the house will be comparable in size and massing to the existing two wings. In fact, because they will be set back further than the existing wings, their visual impact will be lessened. Indeed, the removal of the east wing and the exposure of the original east side wall will serve to restore a portion of the home's architectural integrity and significance. In addition, the construction is designed to "step down" with the inclined slope of the Property, further reducing its visual impact on the existing home.

With respect to the visual impact of the additions on the surrounding streetscape and the park-like setting of the District, we find Mr. Jones' sight-line analysis (Exhibit 65) particularly compelling.⁸ His study shows that proposed construction will only minimally (3%) reduce the viewing distance along West Lenox Street. By retaining 97% of the view shed, the Owners' proposal substantially maintains, and is therefore compatible with, the existing streetscape.

Consequently, the weight of the evidence persuades us that the massing of the Owners' finished home will not materially impact the West Lenox Street view shed or detract from the park-like setting of the District. We conclude that the proposal is therefore compatible in massing with the District.

9. The HPC staff report and the unchallenged testimony of Ms. Fothergill establishes that the lot coverage of the proposed home will increase from 10% to 13% and that it will be comparable to the lot coverage of other

⁷ Mr. Jones found that the average floor area ratio for homes on West Lenox Street is 31%.

⁸ While Mr. Abell also presented a sight-line study, we find his analysis to be seriously flawed and therefore of little probative value, as it failed to include the existing east or west additions to the house.

homes in the District. We therefore conclude that, with respect to lot coverage, the Owners proposal is compatible with the District.

10. The LAP, by a vote of 7-1, recommended approval of the HAWP application (Exhibit 19). While not dispositive, we accord this recommendation the requisite substantial weight.

11. With respect to the proposed installation of a swimming pool on the Property and the potential removal of trees during construction, we find that the record contains insufficient evidence to enable us to properly assess these issues. We note that, in accordance with Section 24A-7(f)(2), the Commission imposed conditions upon the approval of the HAWP requiring the Owners to address these issues more specifically to the HPC at a later date. Given that neither the Owners nor the Appellants contested these conditions, we affirm them.

12. For all of the foregoing reasons, we find that the Owners' HAWP proposal is compatible in character and nature with the historical and architectural features of the Chevy Chase Village Historic District and would not be detrimental thereto or to the achievement of the purposes of Chapter 24A, in accordance with Section 24A-8(b)(2). Accordingly, we find by a preponderance of the evidence that the HPC's approval of the requested HAWP was correct and proper. The Appellants' appeal is therefore **DENIED**.

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Board member Louise L. Mayer was necessarily absent from the June 23, 2004 hearing and did not participate in this Resolution. On a motion by Member Allison Ishihara Fultz, seconded by Vice Chairman Donna Barron, and Chairman Donald H. Spence and Member Angelo Caputo in agreement, the Board adopted the foregoing Resolution.



Allison Ishihara Fultz.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 8th day of December, 2004.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within ten (10) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 2-A-10(f) of the County Code).

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County on accordance with the Maryland Rules of Procedure.